
(1999) 05 GAU CK 0035
In the Gauhati High Court
Case No : Civil Rule No. 2113 of 1998

Union of India (UOI) and Others

APPELLANT

Vs

Munna Roy (Ms.)

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Citation : (1999) 2 GLT 81

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : B.K. Sharma and P.K. Tiwari, for the Appellant; N. Dutta and T. Das, P.K. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—On 19.12.94 the Railway Recruitment Board, Guwahati, for short referred to as "RRB", floated Employment Notice No. 3/94 inviting application for various posts including the post of Craft Teacher (Bengali Medium) listed at Category No. 6. The Respondent Miss Munna Roy and others applied for the said post and after holding necessary selection test a select list was published. However, vide order dated 5.9.96 the select panel was cancelled by the appointing authority and thereupon the Respondent-applicant approached the Central Administrative Tribunal, Guwahati Bench praying for quashing and setting aside the order of cancellation of the select panel and for appointment to the post of Crafts Teacher. The learned Tribunal on hearing the parties set aside the order of cancellation and directed the present Appellant to complete the aforesaid process of recruitment in accordance with law and rules within 3 months. Hence, the present writ petition by the Union of India.

2. We have heard Mr. B.K. Sharma, learned Standing Counsel for the Appellant N.F. Railway and Mr N. Dutta, learned Counsel for the Respondent.

3. Broad facts regarding selection and preparation of penal is not disputed. The learned Tribunal was of the view that the alleged departmental enquiries and the

cancellation of the select penal were done behind the back of the applicant and as such the right of the applicant of being heard before any action prejudicial to her is taken, has been violated. In the instant case there is no dispute at the Bar that before cancellation of the select penal the Respondent was not heard.

4. According to the learned Counsel for the Appellant, the cancellation of the penal was necessitated by the fact that the notice inviting applications for the post was not in accordance with the Rules and provisions of the Manual. The relevant advertisement reads as follows

Category No. 6: Craft Teacher (Bengali medium) Temporary but likely to be made permanent. Scale Rs. 1400-2600/- (RPS). No. of post - 2 (1-UR, 1-ST). Qualifications: (i) (BA/BSc with B.Ed. with work education as method subject from any recognised university) or graduate with certificate in Tailoring/Needle work diploma. (ii) Competency to teach Bengali medium. Age 20 to 40 years.

5. The qualifications prescribed for the post in the Indian Railway Establishment Manual Vol. I are noted-

(1) Higher Secondary from recognised University/Board.

(2) 2 years diploma certificate of training in the trade concern from I.T.I, or any other recognised institution.

(3) 2 years professional experience in any Govt. Institution or a concern of repute.

6. Admittedly, the educational qualifications prescribed in the Employment Notice No. 3/94 was higher than the required qualification and the RRB had no authority to vary the qualifications. Further, two years" professional experience in any Govt. Institution or a concern of repute was required. But, this was done away in the impugned notice. In view of this grave anomalies in the employment notice, many eligible candidates could not apply for the post and naturally the selection held on the basis of an invalid notice was bad in law. This is a case of public employment and the Railways being a model employer was required to act fairly when this fact came to the notice of the concerned department, an enquiry was conducted. Thereafter the penal was cancelled. On consideration of the submissions we are of the view that cancellation made was just and proper. The Railways is more concerned with the larger public interest for which the selection process was initiated and there cannot be any grievance against the cancellation.

7. The next question that comes for consideration is that when the select list is found to be dubious and when the cancellation was bona fide and for valid reasons, whether the selectees are entitled to a hearing before the said cancellation. The learned Tribunal held that the selectees were in fact entitled to a pre-decisional hearing and the failure of the Administration to afford such opportunity amounts to arbitrary and illegal action. The learned Counsel for the Petitioner has submitted that the action of the Railway authorities was just, fair and in the public interest and there is no violation of the principles of natural

justice. The learned Counsel has referred to the decision of the Apex Court in Union Territory of Chandigarh Vs. Dilbagh Singh and others, wherein it has been held that if the cancellation of the select list is for bona fide and not arbitrary, the selected candidates can not claim to have a right to be heard before such cancellation. In the case of Union of India and Others Vs. Anand Kumar Pandey and Others, the Apex Court considered the scope of the applicability of the Rules of natural justice in such cases and held in the facts of the case that it was not safe to make appointment based on the written examination wherein unfair means were adopted in a large scale. In the present case the Railway authorities have rightly refused to make appointment on the basis of unfair selection process and the cancellation of the said select list needs no interference. The selectee is not entitled to any predecisional hearing and the order of cancellation was not at all arbitrary.

8. In view of the above, the writ petition is allowed. The impugned order is set aside and there will be no order as to costs.

9. Considering the facts that these vacancies are lying unfilled for long time, the Railway authorities are directed to step up the process of selection. It is needless to mention that the Respondent shall be eligible to participate in the selection and in case of any bar regarding age, the same shall be relaxed considering the fact that the Respondent was perusing her relief in the court of law.